

REMARKS/ARGUMENTS

Claims 1, 3-9, and 11-15 are currently pending. Claims 16 and 17 are canceled herein. Claims 1-9 and 13 are amended herein. Applicant acknowledges receipt of the above-referenced Office Action and respectfully traverses the substantive portions thereof in their entirety. However, in an effort to expedite allowance of the currently pending claims, Applicant has incorporated the limitations previously recited in claim 2 into claim 1, and the limitations previously recited in claim 10 into claim 9. Applicant respectfully reserves the right to pursue one or more additional patent applications directed to the previously pending claims or alternatives thereto.

CLAIM OBJECTIONS

Claims 1-15 and 17 were objected to in the prior Office Action for a variety of technical reasons. Applicant thanks the Examiner for pointing out the typographic and stylistic errors, and Applicant's amendments have rendered the objections moot. Applicant respectfully requests that the Examiner withdraw the objections.

REJECTIONS UNDER 35 U.S.C. §101

Claims 1, 9, 16 and 17 stand rejected under 35 U.S.C. §101. In making the rejection, it was asserted that the recited processing means could be implemented by a computer without the use of a processor. Applicant respectfully traverses, as a computer without a processor is merely a paperweight, incapable of performing even the most trivial computational tasks. Applicant respectfully asserts that a processing means inherently requires the use of a processor, which is hardware. However, in an effort to expedite allowance of the instant claims, Applicant has amended the rejected claims. Applicant's amendments having rendered the rejection moot, Applicant respectfully requests that the Examiner withdraw the rejections.

REJECTIONS UNDER 35 U.S.C. §§102 and 103

Claim 1-3, 7-9, 11, and 15-17 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,086,618 to Al-Hilali et al. ("Al-Hilali"). Claims 2, 4-6, 10, and 12-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Al-Hilali in view of U.S. Patent No. 6,691,067 to Ding et al. ("Ding"). Applicant respectfully traverses. However, in an effort to expedite allowance of the instant patent application, Applicant has amended the independent claims to focus on an aspect of the claimed invention, that aspect being the fact that the count of the total number of transactions that have not finished execution within a given time interval is

collected and used to improve the estimate of the number of transaction executed during a given time interval. In the Office Action, the Office concedes that Al-Hilali does not teach this limitation, and Applicant agrees. However, on page 11 of the Office Action, it is asserted that column 13, lines 40-43, discloses this limitation. Applicant respectfully traverses. Ding merely discloses collecting data over a long period of time. Ding neither teaches nor suggests counting the total number of transactions that have not finishes execution within a given time interval, as recited in Applicant's claims. Applicant respectfully asserts that the currently pending claims are patentable as neither Al-Hilali nor Ding, either alone or in combination, teaches or suggests all elements recited in Applicant's claims.

CONCLUSION

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicants respectfully preserve their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is courteously requested to contact applicant's undersigned representative.

AUTHORIZATION

The Commissioner is authorized to charge any additional fees associated with this filing, and credit any overpayment, to Deposit Account No. 19-3790. If an extension of time is required, this should be considered a petition therefor. If the fees associated with a Request for Continued Examination are filed herewith, this should be considered a petition therefor.

Respectfully submitted,

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